# IN THE HIGH COURT OF UTTARAKHAND AT NAINITAL

**Central Excise Reference No. 01 of 2003**

Commissioner of Central Excise

Meerut ----Applicant.

**Versus**

M/s Rishabh Velveleen (P)
Ltd. Haridwar -Respondent.

**WITH**

**Central Excise Appeal No. 02 of 2005**

Commissioner of Central Excise

Meerut

----Appellant.

**Versus**

M/s Rishabh Velveleen (P)
Haridwar -------Respondent.

**WITH**

**Central Excise Appeal No. 12 of 2005**

Commissioner of Central Excise

Meerut ----Appellant.

**Versus**

M/s Rishabh Velveleen (P)
Ltd. 9th Kilometer Haridwar Delhi Road
Jwalapur, Haridwar ----Respondent.

Sri Alok Singh, Senior Advocate assisted by Smt. Beena Pandey, learned counsel for the appellant
Sri P.R. Mullick, learned counsel for the respondent

**Dated: July 18, 2007.**

**Coram: Hon'ble P.C. Verma, J.**
**Hon'ble B.C. Kandpal, J.**

All the above matters involve similar controversy and relate to the one and the same respondent, hence

these matters are being decided by this common judgment.

2- Reference No. 1/2003 has been preferred against the judgment and order dated 13-11-2002 passed by the Customs, Excise And Gold (Control) Appellate Tribunal, New Delhi in Appeal No. E/2143/2002-NB(DB), Appeal No. 2/2005 has been filed against the judgment and order dated 27-10-2004/ 4-11-2004 passed by Customs, Excise & Service Tax Appellate Tribunal in Appeal No. E/3962/2004-B & E/3973/2004-B whereas the appeal No. 12 of 2005 has been preferred against the judgment and order dated 28-4-2005 passed by Customs Excise & Service Tax Appellate Tribunal Northern Bench in Appeal No. E/3940/04-NB(SM). By the above orders the appeals filed by the Revenue were dismissed.

3- The following common controversy is involved in the present matters:-

**Whether credit of duty paid U/S 3 of Additional Duties of Excise ( Textile & Textile Articles) Act, 1978 can be utilized towards payment of duty under Section3 of Additional Duties of Excise (Goods of Special Importance) Act, 1957 during the relevant period?.**

4- We have heard the learned counsel for the parties and perused the record.

5- The contention of the Revenue is that credit of additional duty of excise leviable U/S of Additional Duties of Excise (Goods of Special Importance) Act, 1957 cannot be utilized towards payment of duty of

excise leviable under Central Excise Tariff. On the other hand the contention of the respondent is that in the Finance Act, 2004, an amendment with retrospoective effect was introduced whereby such credit was allowed. In explanation to clause (b) of sub-rule (6) of Rule –3 of the CENVAT Credit Rules, 2002, the following amendment was incorporated:-

> *'Explanation-for the removal of doubts, it is hereby declared that the credit of the additional duty of excise leviable under Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 (58 of 1957) and paid on or after the 1st day of April 2000, may be utilized towards payment of duty of excise liviable under the Second Schedule to the Central Excise Tariff Act, 1985 (5 of 1986).'*

6- The above amendment clearly makes provision for credit of the additional duty of excise leviable under Section 3 of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 ( 58 of 1957) towards payment of duty of excise leviable under the Second Schedule to the Central Excise Tariff Act, 1985 ( 5 of 1986). The Commissioner (Appeal) has dealt the matter at a great length. Both the lower appellate authorities have recorded correct finding on the point and the finding so recorded do not require interference in appeal by this Court. The point is decided in favour of the Firm and against the Revenue Department.

7- All the matters viz. the Reference Application and the appeals above preferred by the Revenue are dismissed. The impugned judgment and orders passed by the lower authorities are confirmed. No order as to costs.

8- Let a copy of this order be placed in the files of CEXA Nos. 2 of 2005 and 12 of 2005.

**(B.C. Kandpal, J.)** **(P.C. Verma, J.)**

ISB